LIBRARY
SUPREME COURT, U. S.

No. 74-1305

Supreme Court, U. S.
FILED
APR 14 19
MICHAEL RODAK, JR.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

IN THE MATTER OF PARSONS COLLEGE, BANKRUPT:
CHARLES SLOCA, Petitioner

v.

DAVID C. BAYNE, S. J.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Curtis R. Smothers
Associate Professor of Law
Georgetown University
Law Center
600 New Jersey Ave, N.W.
Washington, D.C. 20001

Attorney
for Petitioner

INDEX

	Page
Opinion below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	3
Statement of the Case	3
Reasons for granting the writ	7
Conclusion	19
Appendix A	20
Appendix B	26
Appendix C.	29

CITATIONS

Cases:

Argersinger v. Hamlin, 407 U. S. 25 (1972)	14, 17
Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U. S. 1 (1964)	17
England v. American Trust Co., 267 F. 2d 20 (9th Cir. 1959)	10, 15
Goff v. Russell Co., 495 F.2d 199 (5th Cir. 1974)	10
In re Baker, 299 F. Supp. 404 (W. D. Mo. 1969)	9, 10
In re Elkins-Dell Mfg. Co., 253 F. Supp. 864 (E. D. Pa. 1966)	11
In re Gault, 387 U. S. 1 (1967)	13
In re KDI Corp., 477 F. 2d 742 (6th Cir. 1973)	10
In re Kimble, 163 F. Supp. 904 (N. D. Cal. 1958)	10, 15
In re Langfeldt, 253 F. 458 (S. D. Fla. 1918)	8
In re Laskin, 316 F. 2d 70 (3rd Cir. 1963)	11

In re Los Angeles Lumber Co., 46 F. Supp. 77 (S. D. Cal. 1941) 11

In re Madway, 179 F. Supp. 400 (E. D. Pa. 1959) 9

In re Miller, 485 F.2d 74 (5th Cir. 1973) 11

In re Pope, 101 F. Supp. 503 (N. D. Ohio 1951) 8, 10

In re Soloway & Katz, 195 F. 103 (D. C. Conn. 1912) 11

In re Stalco TV and Appliance Co., 129 F. Supp. 490 (S. D. Texas 1955) 11

In re Stein, 94 F. 124 (D. C. Ind. 1899) 8

Johnson v. Zerbst, 304 U. S. 458 (1938) 12

Kelly v. National City Bank of New York, 71 F. 2d 689 (3rd Cir. 1934) 9

Morehead v. Greenville Supply Co., 439 F. 2d 962 (6th Cir. 1971) 11

Powell v. Alabama, 287 U. S. 45 (1932) 12

Statutes:

11 U. S. C. § 1 et. seq.	3
§1-11	8
§§32,33	9
§§66,67	11
§66(2)	11
§67(a)(1)	9
§91	9
§94	8
28 U. S. C. §1254(1)	2
28 U. S. C. § 1915(d)	3
28 U. S. C. § 2075	18

Miscellaneous:

37 Albany L. Rev. 383 (1973)	13
3 Collier on Bankruptcy §58.08 (14th ed.)	8
3A Collier on Bankruptcy §64.303 (14th ed.)	10, 15
66 Colum. L. Rev. 1322 (1966)	14
5 Remington on Bankruptcy §§ 1986.1988 (5th ed.)	9
6 Remington on Bankruptcy §2725 (5th ed.)	10, 15
76 Yale L. J. 545 (1967)	13

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

No.

IN THE MATTER OF PARSONS COLLEGE, BANKRUPT:
CHARLES SLOCA, Petitioner

v.

DAVID C. BAYNE, S. J.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Charles Sloca, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled case on November 14, 1974.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Eighth Circuit (Appendix A, infra) is unreported and was entered on November 14, 1974, affirming the opinion of the United States District Court for the Southern District of Iowa Central Division of March 27, 1974 which

denied Petitioner's appeal from the orders of the Bankruptcy Judge, the Honorable Richard Stageman, in the bankruptcy proceedings of Parsons College. The Court of Appeals denied a timely petition for rehearing on December 5, 1974. Thereafter, on the 6th of January, Mr. Justice Blackmun signed an order extending the time for filing this petition for certiorari to and including March 15, 1975. On March 2, 1975, Mr. Justice Blackmun granted an additional extension of time to file this petition to and including April 14, 1975.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether Petitioner who was unable to afford assistance of counsel while being required to assume party litigant status before a civil forum empowered to adjudge deprivation of his substantial property rights and interests was denied due process of law by the Court's failure to appoint counsel subsequent to his demonstration of inability to prosecute claims based upon significant questions of law and fact.

2. Whether Petitioner's entitlement to effective assistance of counsel in the

bankruptcy proceedings below is implicit within the meaning of the Bankruptcy Act (11 U.S.C. § 1 et. seq.) and the in forma pauperis statute (28 U.S.C. § 1915).

STATUTES INVOLVED

1. 11 U.S.C. § 1 et. seq. ("Bankruptcy Act").

2. 28 U.S.C. § 1915(d).

STATEMENT OF THE CASE

This action arises out of the bankruptcy proceedings of Parsons College, a former four year liberal arts college in Fairfield, Iowa. Petitioner, Charles Sloca, was associated with the college as a tenured professor and former administrator from 1957 until 1973.

On May 18, 1973, the debtor filed a voluntary petition for a Chapter XI arrangement under the Bankruptcy Act in the United States District Court for the Southern District of Iowa Central Division.

On May 25, 1973 the first hearing was held on the Petition of Parsons College with Richard Stageman presiding as Bankruptcy Judge. Petitioner together with four other faculty members had retained an attorney to represent their interests at said hearing. On May 29th, the Court required the posting of an indemnity bond

in the amount of $250,000. Parsons College was unable to raise the money, and on June 11, 1973 filed a consent to adjudication. As a result, the Bankruptcy Judge entered an order adjudging the debtor a bankrupt and directing bankruptcy on the same day.

After being advised of probable attorney's fees associated with prosecution of this claim, Petitioner, who had not been paid for more than 3 months, determined that he was unable to pay. Although lacking formal legal training, Petitioner decided to act as his own attorney in presenting his objections and concerns in the bankruptcy proceedings.

On June 19, 1973 the bankruptcy judge ordered the First Meeting of Creditors scheduled for July 2, 1973. Petitioner did not receive notice of this meeting. Unsatisfied with his efforts to deal with the Bankruptcy Judge and Trustee informally, Petitioner submitted the first of several written documents to the Trustee and Bankruptcy Judge on July 20, 1973: a detailed Proposal for Reorganization. In a cover letter to the Proposal, Petitioner requested advice concerning the proposal and stated that he did not know the bankruptcy law. The Bankruptcy Judge replied in a letter that this would be a matter for Petitioner's attorney. The Trustee offered no response.

In August of 1973, Petitioner learned of the proposed sale of the college library and its contents; however, he did not receive formal notice of the same from the Bankruptcy Judge. He then submitted a Petition on August 23rd requesting the Court to enjoin the sale and to clarify for the Petitioner his rights against the Trustee. No response was received.

On August 31, in response to the Trustee's request for substantiation of allegations of negligence and misconduct on the part of college trustees, Petitioner completed and submitted a 98 page set of materials on that subject. Again, no response was received.

A second petition was filed by Petitioner on September 12, 1973 requesting a hearing and again charging negligence and misconduct on the part of college officials and trustees. Petitioner subsequently submitted an Appendix to the second petition alleging his denial of due process in the prior bankruptcy proceedings.

The Bankruptcy Judge ordered a hearing on the petitions on October 4, 1973. Prior to the hearing, Petitioner wrote two letters to the judge requesting: (1) a subpoena duces tecum for the minutes and records of the college for the preceding five years and (2) that the Court

request that officers of the college be present at the hearing on October 4, 1973 so that further information could be elicited regarding the charges of negligence and misconduct. Neither request was acted upon by the Bankruptcy Judge.

A hearing was held on October 4, 1973. Petitioner had prepared and submitted a brief containing several arguments. At the hearing, the Bankruptcy Judge asked Petitioner for evidence. Petitioner asked whether the officers of the college had been requested to attend the hearing. The Bankruptcy Judge replied that they had not. Petitioner then stated that he had intended to go over the arguments outlined in his brief and was allowed to do so for 30 minutes. At the end of the hearing, the Bankruptcy Judge ordered that the petitions be dismissed.

Following that action, Petitioner appealed to the United States District Court for the Southern District of Iowa, and submitted another petition in which he reiterated his allegations of denial of due process in the prior proceedings and negligence and misconduct of the college trustees and officials. On March 27, 1974, the District Court found that the Bankruptcy Judge had not been clearly erroneous in his rulings, and that Petitioner was not denied due process.

Appeal was then taken to the United States Court of Appeals for the Eighth Circuit which concluded that the Appeal was without merit on November 14, 1974. The Court noted that Petitioner had not taken timely appeal from any of the orders of the Bankruptcy Judge.

Petitioner acted as his own counsel in the proceedings up until the filing of this Petition. In March 1975, Curtis R. Smothers of Georgetown University Law Center agreed to act as counsel for Petitioner.

REASONS FOR GRANTING WRIT

I. DEFINITION BY THIS COURT OF THE PARAMETERS OF THE RIGHT TO COUNSEL IN BANKRUPTCY PROCEEDINGS AS APPLIED TO A CREDITOR UNABLE TO AFFORD EFFECTIVE ASSISTANCE OF COUNSEL IS REQUIRED NOT ONLY BECAUSE IT IS CRITICAL TO FAIR AND EFFICIENT ADMINISTRATION OF THE BANKRUPTCY ACT BUT ALSO RAISES IMPORTANT CONSTITUTIONAL DUE PROCESS ISSUES.

A decision not to accept certiorari is to let the administration of the Act be governed not by the aim of legislation to safeguard the rights of creditors, but to enhance the likelihood that creditors in subsequent bankruptcy proceedings will be denied due process. Further, this issue

has not heretofore been determined by this Court.

Rights and Privileges of the Creditor Under the Act

The Bankruptcy Act seeks to promote a creditor opportunity for satisfaction by establishing rights which guarantee his opportunity to be heard, gain access to evidence, and oppose improper discharge.

Petitioner, as a tenured professor, falls within the definition of creditor as outlined by the Act as: "anyone who owns a debt, demand, or claim provable in bankruptcy", 11 U.S.C. §1-11. As such, he was entitled to notice of all bankruptcy proceedings.

Notice should be given to creditors at every important step of the proceedings 3 Collier on Bankruptcy §58.08 (14th ed.). All known creditors are entitled to 10 days notice of the first and all other meetings of creditors In re Stein, 94 F. 124 (D.C.Ind. 1899). Creditors are also entitled to notice of any proposed sale. 11 U.S.C. §94. The notice requirement is to be strictly complied with In re Langfeldt, 253 F.458 (S.D.Fla. 1918) and failure to give notice can result in discharge being set aside In re Pope 101 F. Supp. 503 (N.D.Ohio 1951). The referee (or Bankruptcy Judge) is responsible for

giving notice. 11 U.S.C. §67(a)(1).

The Act at 11 U.S.C. §91 provides for meetings of creditors. It is clear that one of the primary purposes of such meetings is to provide creditors with an opportunity to examine the bankrupt.

Any creditor may examine the bankrupt, 5 Remington on Bankruptcy, §§ 1986,1988 (5th ed.). If a creditor did not receive notice of the first meeting of creditors where the bankrupt was examined, he should have an opportunity to do so, Kelly v. National City Bank of New York, 71 F. 2d 689 (3rd Cir. 1934). The purpose of such examination is to allow creditors to determine the basis for valid objections to the discharge of the bankrupt, and a case may be reopened because a creditor did not have an opportunity to examine the bankrupt. In re Baker, 299 F. Supp. 404 (D.C.Mo. 1969).

The creditor's opportunity to examine the bankrupt is critical to an additional right of the creditor: to oppose the discharge of the bankrupt. 11 U.S.C. §§ 32 and 33 outline when discharges are granted and revoked and the right of creditors to oppose such discharges. An independent creditor can independently oppose a discharge, and his right to be heard outweighs any charges of delay or inconvenience to the bankrupt. In re Madway,

179 F.Supp. 400 (D.C.Pa. 1959).

A discharge may be vacated based on fraud on the part of the bankrupt or where there was a failure to comply with the jurisdictional requirement of mailing notice to creditors In re Pope, 101 F. Supp. 503 (N.D.Ohio 1951). While alleged suspicious circumstances of bankrupt's transactions were sufficient grounds for discharge when coupled with the lack of an extensive examination of the bankrupt, In re Baker, 299 F. Supp. 404 (D.C.Mo. 1969), usually an objector must make out a prima facie case of fraud, after which the burden of proof shifts to the bankrupt to justify his actions, Goff v. Russell, 495 F.2d. 199 (5th Cir. 1974); In Re KDI Corp., 477 F.2d 742 (6th Cir. 1973).

Critical to effective opposition is a thorough examination of the bankrupt, and the Court may award attorney's fees to a creditor for his role in resistance to discharge. England v. American Trust Co., 267 F.2d. 20 (9th Cir. 1959); In re Kimble, 163 F. Supp. 904 (N.D. Cal. 1958). 6 Remington on Bankruptcy, § 2725 (5th ed.); 3A Collier on Bankruptcy, § 64.303 (14th ed.).

The Bankruptcy Judge and Trustee have specific duties and responsibilities towards creditors in bankruptcy proceedings

as outlined in the Act. However, these duties and responsibilities were not performed by them as to Petitioner.

The referee's jurisdiction and powers are set out in 11 U.S.C. §§ 66 and 67. He must give notice to all creditors and furnish information to parties in interest. He also has a duty of inquiry: In re Elkins-Dell Mfg. Co., 253 F. Supp. 864 (E.D.Pa. 1966), he is to give rigorous scrutiny to the conduct and dealings of the bankrupt. A referee is required to look into the merit of charges made by creditors, In re Laskin, 316 F.2d 70 (3rd Cir. 1963); In re Staco TV and Appliance Co., 129 F. Supp. 490 (S.D. Texas 1955).

A referee may also call for the production of books and records of the bankrupt [11 U.S.C. § 66(2); In re Soloway & Katz, 195 F. 103 (D.C.Conn. 1912)], and may do so without issuing a subpoena duces tecum. Morehead v. Greenville Supply Co., 439 F. 2d 962 (6th Cir. 1971).

The Trustee acts in a fiduciary capacity to all creditors; however, his primary responsibility is to the unsecured creditors In re Los Angeles Lumber Co., 46 F. Supp. 77 (S.D.Cal. 1941). This fiduciary role also entails a duty to inform, In re Miller, 485 F.2d. 74 (5th Cir. 1973).

Clearly, the Act, as written and as interpreted by the lower courts, places great empnasis on ptotections that creditors be given in bankruptcy proceedings. (re: notice and an opportunity to be heard). Just as clearly, Petitioner in this case was not afforded these protections or guarantees.

Necessity for Appointed Counsel to Insure Those Guarantees

> The right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of the law. He is unfamiliar with the rules of evidence. He lacks both the skill and the knowledge adequately to prepare his defense even though he have a perfect one.
>
> Powell v. Alabama, 287 U.S. 45, 68-69 (1932)

Though involving a criminal case, Mr. Justice Sutherland's statement is equally applicable in civil matters.

"The need for counsel exists wherever the procedural and substantive rights of a person may fail to be asserted fully because of his ignorance or inexperience. It exists whenever that which is simple, orderly, and necessary to the lawyer to the untrained layman may appear intricate, complex, and mysterious." Johnson v.

Zerbst, 304 U.S. 458, 463 (1938).

Trying one's own civil case may be just as difficult as a criminal one; this is especially true with an area as complex as bankruptcy law. A civil trial is conducted under technical rules of evidence and procedure; it demands skill in marshalling and presenting facts. See The Indigent's Right to Counsel in Civil Cases, 76 Yale L. J., 545, 548 (1967).

Because notice and timely appeal are critical in bankruptcy proceedings (as the 8th Circuit noted), the assistance of counsel is necessary "to cope with the problems of law, to make skilled inquiry into the facts, to insist upon regularity in the proceedings, and to ascertain whether he has a defense and to prepare and submit it." In re Gault, 387 U.S. 1, 36 (1967). (Emphasis added).

"The Fifth Amendment does not discriminate between life, liberty and property. Therefore, there is no constitutional reason why one who is deprived of the Fifth Amendment right to life or liberty should have more rights than one who is deprived of property. The Indigent's Expanding Right to Appointed Counsel, 37 Albany L. Rev. 383, 394 (1973). Indeed, "the struggling employee may well find a wage assignment or confiscation of his tools as onerous in securing employment as a criminal conviction. Moreover, the citizen

who permanently loses his home, a government job, a required license, or unemployment benefits may *** receive a more crippling blow than the criminal who serves a jail sentence." The Right to Counsel in Civil Litigation, 66 Colum. L. Rev. 1322, 1933 (1966).

Petitioner, at the time these bankruptcy proceedings were initiated, was a tenured professor. As a creditor of his employer he was threatened with loss of his contractual right to compensation which was then three months in arrears. And because his employer was an academic institution his property interest extended beyond the contract for the current academic year and included rights to lifetime employment as well as substantial retirement benefits. To conceive a creditor with a greater stake in the continued economic viability of his debtor challenges the imagination.

"When the deprivation of property rights is of sufficient consequence, denying the assistance of counsel to indigents who are incapable of defending themselves is a denial of due process." Argersinger v. Hamlin, 407 U.S. 25, 48 (Powell, J. concurring).

Denial of appointed counsel also raises an equal protection issue in that persons (in this case creditors) who cannot afford

counsel might be denied equal protection in that wealthy creditors can not only afford counsel, but can be reimbursed for attorney's fees if they successfully oppose discharge. England v. American Trust Co., 267 F.2d 20 (9th Cir. 1959); In re Kimble, 163 F.Supp. 904 (N.D.Cal. 1958); 6 Remington on Bankruptcy, § 2725 (5th ed.); 3A Collier on Bankruptcy, § 64.303 (14th ed.).

In measuring the Petitioner's action below against the standards outlined by the Act, the consequences of lack of effective representation are obvious.

First, the involuntary nature of the proceedings as to Petitioner should be considered. Petitioner was in effect forced into litigation. He faced the loss of substantial property rights as a tenured professor of the college. Petitioner made a good faith effort to hire an attorney, and when he no longer could afford counsel, represented himself. As a pro se litigant, he was diligent in his efforts.

Moreover, Petitioner raised substantial legal issues (initially regarding reorganization and subsequently, negligence and misconduct of college officials as well as his denial of due process). Additionally, Petitioner received no notice from the court as to critical steps in these proceedings (first meeting of creditors, sale of library) nor did he have an effective

opportunity to be heard or examine the bankrupt; all of which are guaranteed by the Bankruptcy Act. Finally, and equally as critical, was the lack of response from the Bankruptcy Judge and rustee both to Petitioner's requests for information regarding his rights under the Act and as to his written communications (reorganization plan, materials on negligence and misconduct of college officials,petitions). Further, there was no response by either person in the way of follow-up or investigation to Petitioner's allegations of the questionability of the bankrupt's transactions and conduct contrary to their statutory duty of inquiry outlined in the Act.

The foregoing demonstrates that participation of counsel below would have contributed substantially to the protection of these important rights. The critical question remains whether such protections by statutory command or constitutional mandate may be enjoyed as a matter of right and invoked at the critical stages of bankruptcy proceedings.

It is clear that the continued participation of counsel would have assured adequate notice of the meetings of creditors, guaranteed a full and fair discussion of Petitioner's proposed reorganization plan and undoubtedly have led to a full examination of the debtor.

While doctrinal development of the constitutional right to counsel has clearly achieved greater definition in the criminal law area, there has been remarkedly little disagreement with respect to this court's assessment of the lawyer's impact without regard to whether the case be civil or criminal.

Mr. Justice Black observed in Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1, 7 (1964) that: "laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries. . ." In a remarkably similar assessment of the lawyer's impact in the criminal arena, Mr. Chief Justice Burger concurring in Argersinger v. Hamlin, 407 U.S. 25, 41 (1972) noted that: "Appeal from a conviction after an uncounseled trial is not likely to be of much help to a defendant since the die is usually cast when judgment is entered on an uncounseled trial record."

Concurrence with this result oriented assessment of the impact of effective assistance of counsel does not force the conclusion that symmetry in scope and method of implementation are required either constitutionally or by statute. Few would argue that a citizen's every urge to sue should be promoted by an obligation on the part of the state to open the public purse in support of his

cause. However, the creditor in a voluntary bankruptcy proceeding who is without funds to retain counsel is not unlike the indigent criminal defendant with respect to options afforded for the protection of his vital interests. Neither has selected the forum. Neither can ignore it without the likelihood of prejudice to his substantial rights. Neither can reasonably expect to fare well against trained adversaries advancing positions antithetical to his interests. This court should grant certiorari for the purpose of defining the protection afforded this particular class of civil litigant who is required by the Bankruptcy Act to surrender a full range of creditor options while submitting to the exclusive jurisdiction of a forum which may terminate his substantial property rights. The gravamen of the question is how much balance is required to insure fair play when the language and abilities of laymen are forced into an arena occupied almost exclusively by the law's special rhetoric and skills which are the end product of centuries of development by men and women possessed of special expertise.

II. THE COURT HAS A SPECIAL INTEREST IN THE ADMINISTRATION OF AND PROCEDURES FOLLOWED IN BANKRUPTCY PROCEEDINGS BY VIRTUE OF 28 U. S. C. § 2075.

28 U. S. C. § 2075 states that: "the Supreme Court shall have the power to prescribe the general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act." Specifically, the Court should grant certiorari in this case because of the serious question of denial of due process to creditors in these proceedings considering the likelihood that this problem may recur and that both creditors and the lower courts can benefit from the assistance of this Court in interpreting the language and provisions of the Bankruptcy Act.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully submitted,

Curtis R. Smothers
Associate Professor of Law
Georgetown University Law Center
600 New Jersey Avenue, N. W.
Washington, D. C. 20001

Attorney for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

[Filed November 14, 1974]

[Submitted October 17, 1974]

IN THE MATTER OF PARSONS COLLEGE, BANKRUPT. CHARLES SLOCA,	)	
Appellant,	)	
v.	)	No. 74-1344
DAVID C. BAYNE, S. J.,	)	
Appellee.	)	

Appeal from the United States District Court for the Southern District of Iowa

Before: VAN OOSTERHOUT, Senior Circuit Judge, BRIGHT and ROSS, Circuit Judges

PER CURIAM:

Dr. Charles Sloca, a former professor and administrator of the now-defunct Parsons College of Fairfield, Iowa, on this appeal and through his prior petitions filed with the bankruptcy court seeks a means of reopening the college through an arrangement to be agreed to

judicially under *Chapter XI of the Bankruptcy Act*. The college discontinued operations during the summer of 1973. At that time the institution, which had been operating as a debtor in possession under Chapter XI, was adjudicated a bankrupt.

In this appeal Professor Sloca attacks the underlying Orders of the bankruptcy judge which

1) directed, on May 29, 1973, that the college file an indemnity bond in the sum of $250,000, as a condition to obtaining an injunction against any secured creditor from interfering with the college's use of its encumbered property; and

2) adjudged the college as bankrupt on June 11, 1973, following its failure to file an indemnity bond as directed by the previous order.

Sloca did not seek judicial review of either of these orders of the bankruptcy judge. He did, however, file several subsequent petitions in the bankruptcy proceedings. From adverse decisions by the bankruptcy judge he sought judicial review by the district court, and, after obtaining no relief from it, he brought this appeal. By order of March 27, 1974, the district court affirmed the action.

of the bankruptcy judge denying Professor Sloca any relief on the following petitions:

1) Petition of August 27, 1973, challenging the abandonment of library materials to secured creditors and the denial of relief under Chapter XI of the Bankruptcy Act;

2) Petition of September 14, 1973, charging the administration of Parsons College with misuse of funds; and

3) Petition of September 18, 1973, charging that he had been deprived due process of law.

In affirming the bankruptcy judge, the district court observed that (a) the bankruptcy judge's decision not to allow Parsons College to be reorganized under Chapter XI was not before the court, and (b) Professor Sloca was afforded due process in the bankruptcy proceedings. We agree.

Based upon our reading of Professor Sloca's prolix and redundant pro se brief, we understand him to be raising two contentions. First, he contends that the bankruptcy judge erred in declining to allow Parsons College to continue to operate as a college under a Chapter XI arrangement. The simple answer to this

contention is that Professor Sloca took no timely appeal, through a petition for review by the district court, from the order of the bankruptcy judge of May 29, 1973, requiring an indemnity bond, or from the order of June 11, 1973, adjudging the college bankrupt. The order of abandonment of the college library issued August 29, 1973, also became final upon Professor Sloca's failure to file for review by the district court. See §39(c) of the Bankruptcy Act, 11 U.S.C. §67(c) (1970).

Second, Professor Sloca contends that he has been deprived of his right to due process by the bankruptcy court. He does not demonstrate that the bankruptcy court or the trustee has acted contrary to law or without giving creditors and others proper notice of proceedings. 1/ In this regard, we find the comments of District Judge Stuart particularly apt:

> The Court is convinced from the statements of the bankruptcy judge that every attempt was made to facilitate appellant's appearance and to allow his presentation and argument. The Court is of the opinion that the bankruptcy judge acted in such a manner so as to preserve appellant's rights while giving him sufficient opportunity to make

his arguments. [In the Matter of Parsons College, Bankruptcy No. 0-24-73, slip op. at 2 (S.D. Ia., Mar. 27, 1974).]

Accordingly, we conclude that the appeal is without merit and we affirm.

Footnote 1 (Reference page 4)

The record does show that the adjudication in bankruptcy followed from the debtor's consent but without a hearing or notice as prescribed by §327 of the bankruptcy Act, 11 U.S.C. §727. However, Professor Sloca does not challenge this adjudication on the basis of lack of notice or hearing and he shows no prejudice arising from the failure to give notice or hold any further hearing prior to the adjudication. As we have already noted, appellant did not seek judicial review of that order of the bankruptcy court. Furthermore, this record contains adequate grounds for the determination by the bankruptcy court that Parsons College was hopelessly insolvent. The issue of insolvency had been presented at a full hearing held before the bankruptcy judge in connection with the request of Parsons College that secured creditors be enjoined from interference with debtor's use of encumbered property.

Finally, even though no hearing was called on the adjudication in bankruptcy, the bankruptcy court afforded Professor Sloca ample opportunity to present his objections to prior bankruptcy procedures and his claims were properly rejected as without merit.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IN THE MATTER OF	)	Bankruptcy No. 0-24-73
PARSONS COLLEGE,	)	
	)	ORDER
Bankrupt.	)	

This matter is before the Court on a notice of appeal filed by Charles Sloca, pro se. His appeal is directed at the decision of the bankruptcy judge, the Honorable Richard Stageman, to allow the contents of the Parsons College Library to be sold.

In reviewing this case, the Court operates under the authority of Rule 810, Rules of Bankruptcy. That rule specifically limits the reviewing court's inquiry to a finding that the bankruptcy judge was "clearly erroneous" in his rulings. This Court is of the opinion that after reading appellant's brief that he is seeking to have a de novo review of the bankruptcy proceedings. In other words appellant Sloca is asking the Court to readjudicate the Parsons College bankruptcy.

This Court does not have the power to do that. This Court does not sit in the place of the bankruptcy judge and redecide the facts. The decision of the bankruptcy judge must stand as to the facts and the law unless they appear to

this Court to be clearly erroneous.

The Court cannot say that the bankruptcy judge's decision was clearly erroneous as to his decision not to allow Parsons College to be reorganized under Chapter 11. That issue is not before the Court, despite appellant's attempts to urge it. This Court believes that the only proper inquiry for review is whether appellant Sloca was denied due process in the bankruptcy proceedings.

The appellant makes a number of allegations as to the deprivation of his due process, but the Court is unable to agree with him after a reading of the record before it. In most cases, appellant Sloca confuses a deprivation of due process with an adverse ruling on his various proposals as to reorganization of Parsons College.

The Court is in sympathy with those who sought to keep Parsons College a viable institution and regrets the fact that it has been forced to close. However, the Court cannot replace the decision of the bankruptcy court with its own.

A reading of the transcript of the hearing held by Judge Stageman on October 4, 1973, on appellant Sloca's petition for an injunction to revoke the order of abandonment of the Parsons College Library

does not reveal to the Court a denial of appellant's rights. Appellant was given sufficient opportunity at that time to present his arguments and any evidence he wanted to introduce. And by his own brief, he admits that his right to file petitions and briefs in support of his position has never been limited or qualified.

There does seem to be some question as to appellant's presentation of evidence through witnesses, however the appellant does not challenge their absence in his appeal. The Court is convinced from the statements of the bankruptcy judge that every attempt was made to facilitate appellant's appearance and to allow his presentation and argument. The Court is of the opinion that the bankruptcy judge acted in such a manner so as to preserve appellant's rights while giving him sufficient opportunity to make his arguments. Therefore,

IT IS HEREBY ORDERED, that the appeal taken by Charles Sloca in this matter is denied.

Signed this 27th day of March, 1974.

W. C. Stuart, U.S. District Judge
Southern District of Iowa

APPENDIX C

28 U. S. C. § 1915 (d):

"The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 1975, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Richard Bauerle, Esq., 112 W. 2nd Street, Ottumwa, Iowa, Attorney for Respondent.

Curtis R. Smothers
Georgetown University
Law Center
600 New Jersey Ave., N. W.
Washington, D. C. 20001
Attorney for Petitioner